

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government:

HB 617 is likely to limit future lawsuits against the collectors of retail taxes.

B. EFFECT OF PROPOSED CHANGES:

HB 617 redesignates the existing language of s. 213.756, F.S., as subsection (1) and adds new subsection (2), which provides that in any action by a purchaser against a retailer, dealer, or vendor for a refund or recovery of taxes collected from the purchaser, it is an affirmative defense when the retailer, dealer, or vendor remitted the amount collected by the appropriate taxing authority, less and discount or collection allowance authorized by law. The sole remedy is an action for damages measured by the difference between what the retailer, dealer, or vendor collected as a tax and what the person remitted, plus discounts or collection allowances. New subsection (2) applies to the taxes enumerated in s. 72.011, F.S., excluding Chapter 202, F.S., and that portion of Chapter 303, F.S. collected thereunder, and also applies to taxes imposed under Chapter 205, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 213.756, F.S.

Section 2. This is a severability clause.

Section 3. Provides an effective date of July 1, 2005 to apply retroactively.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

If the amount of current and future litigation is reduced as a result of this complete defense, there may be a savings in the administration of State Courts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

If local governments supplement the budgets for local courts, local governments may see a decrease in expenditures for local courts.

C.

D. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private sector retailers, dealers, and vendors will not be unwilling participants in tax refund litigation.

E. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because the bill does not: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities and counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Finance and Tax Committee met on March 29, 2005 and adopted a strike-all amendment, as well as an amendment to the strike-all, which clarified that remittance of the tax collected by the retailer, dealer, or vendor to the taxing authority constituted an affirmative defense. The strike-all clarified that the only remedy available to the purchaser is damages for the difference between what the retailer, dealer, or vendor collected and what they remitted to the taxing authority, less plus any discount or collection allowance. It also added a section on severability and a section which provides for retroactive application of the bill.